

§ 200.20 based on school year 2011–2012 assessment results, calculate graduation rate under paragraph (b)(2) of this section at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(c) The State may include additional academic indicators determined by the State, including, but not limited to, the following:

(1) Additional State or locally administered assessments not included in the State assessment system under § 200.2.

(2) Grade-to-grade retention rates.

(3) Attendance rates.

(4) Percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(d) A State must ensure that its other academic indicators are—

(1) Valid and reliable;

(2) Consistent with relevant, nationally recognized professional and technical standards, if any; and

(3) Consistent throughout the State within each grade span.

(e) Except as provided in § 200.20(b)(2), a State—

(1) May not use the indicators in paragraphs (a) through (c) of this section to reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used; but

(2) May use the indicators to identify additional schools for school improvement, corrective action, or restructuring.

(Approved by the Office of Management and Budget under control numbers 1810–0581 and 1810–0576)

(Authority: 20 U.S.C. 6311(b)(2), (h))

[67 FR 71717, Dec. 2, 2002, as amended at 73 FR 64508, Oct. 29, 2008; 73 FR 72352, Nov. 28, 2008]

#### **§ 200.20 Making adequate yearly progress.**

A school or LEA makes AYP if it complies with paragraph (c) and with either paragraph (a) or (b) of this section separately in reading/language arts and in mathematics.

(a)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

(i) Each group of students under § 200.13(b)(7) meets or exceeds the State's annual measurable objectives under § 200.18; and

(ii) The school or LEA, respectively, meets or exceeds the State's other academic indicators under § 200.19.

(2) For a group under § 200.13(b)(7) to be included in the determination of AYP for a school or LEA, the number of students in the group must be sufficient to yield statistically reliable information under § 200.7(a).

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if, consistent with paragraph (f) of this section—

(1) The percentage of students in that group below the State's proficient achievement level decreased by at least 10 percent from the preceding year; and

(2) That group made progress on one or more of the State's academic indicators under § 200.19 or the LEA's academic indicators under § 200.30(c).

(c)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

(i) Not less than 95 percent of the students enrolled in each group under § 200.13(b)(7) takes the State assessments under § 200.2; and

(ii) The group is of sufficient size to produce statistically reliable results under § 200.7(a).

(2) The requirement in paragraph (c)(1) of this section does not authorize a State, LEA, or school to systematically exclude 5 percent of the students in any group under § 200.13(b)(7).

(3) To count a student who is assessed based on alternate or modified academic achievement standards described in § 200.1(d) or (e) as a participant for purposes of meeting the requirements of this paragraph, the State must have, and ensure that its LEAs adhere to, guidelines that meet the requirements of § 200.1(f).

(d) For the purpose of determining whether a school or LEA has made AYP, a State may establish a uniform procedure for averaging data that includes one or more of the following:

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### (1) *Averaging data across school years.*

(i) A State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) If a State averages data across school years, the State must—

(A) Implement, on schedule, the assessments in reading/language arts and mathematics in grades 3 through 8 and once in grades 10 through 12 required under § 200.5(a)(2);

(B) Report data resulting from the assessments under § 200.5(a)(2);

(C) Determine AYP under §§ 200.13 through 200.20, although the State may base that determination on data only from the reading/language arts and mathematics assessments in the three grade spans required under § 200.5(a)(1); and

(D) Implement the requirements in section 1116 of the ESEA.

(iii) A State that averages data across years must determine AYP on the basis of the assessments under § 200.5(a)(2) as soon as it has data from two or three years to average. Until that time, the State may use data from the reading/language arts and mathematics assessments required under § 200.5(a)(1) to determine adequate yearly progress.

(2) *Combining data across grades.* Within each subject area and subgroup, the State may combine data across grades in a school or LEA.

(e)(1) In determining the AYP of an LEA, a State must include all students who were enrolled in schools in the LEA for a full academic year, as defined by the State.

(2) In determining the AYP of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State.

(f)(1) In determining AYP for a school or LEA, a State may—

(i) Count recently arrived limited English proficient students as having participated in the State assessments for purposes of meeting the 95 percent participation requirement under paragraph (c)(1)(i) of this section if they take—

(A) Either an assessment of English language proficiency under § 200.6(b)(3)

or the State's reading/language arts assessment under § 200.2; and

(B) The State's mathematics assessment under § 200.2; and

(ii) Choose not to include the scores of recently arrived limited English proficient students on the mathematics assessment, the reading/language arts assessment (if administered to these students), or both, even if these students have been enrolled in the same school or LEA for a full academic year as defined by the State.

(2)(i) In determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, a State may include, for up to two AYP determination cycles, the scores of—

(A) Students who were limited English proficient but who no longer meet the State's definition of limited English proficiency; and

(B) Students who were previously identified under section 602(3) of the IDEA but who no longer receive special education services.

(ii) If a State, in determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, includes the scores of the students described in paragraph (f)(2)(i) of this section, the State must include the scores of all such students, but is not required to—

(A) Include those students in the limited English proficient subgroup or in the students with disabilities subgroup in determining if the number of limited English proficient students or students with disabilities, respectively, is sufficient to yield statistically reliable information under § 200.7(a); or

(B) With respect to students who are no longer limited English proficient—

(1) Assess those students' English language proficiency under § 200.6(b)(3); or

(2) Provide English language services to those students.

(iii) For the purpose of reporting information on report cards under section 1111(h) of the Act—

(A) A State may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities

subgroups, respectively, for the purpose of reporting AYP at the State level under section 1111(h)(1)(C)(ii) of the Act;

(B) An LEA may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the LEA and school levels under section 1111(h)(2)(B) of the Act; but

(C) A State or LEA may not include the scores of former limited English proficient students or former students with disabilities as part of the limited English proficient or students with disabilities subgroup, respectively, in reporting any other information under section 1111(h) of the Act.

(g) *Transition provision regarding modified academic achievement standards.* The Secretary may provide a State that is moving expeditiously to adopt and administer alternate assessments based on modified academic achievement standards flexibility in accounting for the achievement of students with disabilities in AYP determinations that are based on assessments administered in 2007–08 and 2008–09. To be eligible for this flexibility, a State must meet criteria, as the Secretary determines appropriate, for each year for which the flexibility is available.

(h) *Student academic growth.* (1) A State may request authority under section 9401 of the Act to incorporate student academic growth in the State's definition of AYP under this section.

(2) A State's policy for incorporating student academic growth in the State's definition of AYP must—

(i) Set annual growth targets that—

(A) Will lead to all students, by school year 2013–2014, meeting or exceeding the State's proficient level of academic achievement on the State assessments under § 200.2;

(B) Are based on meeting the State's proficient level of academic achievement on the State assessments under § 200.2 and are not based on individual student background characteristics; and

(C) Measure student achievement separately in mathematics and reading/language arts;

(ii) Ensure that all students enrolled in the grades tested under § 200.2 are included in the State's assessment and accountability systems;

(iii) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);

(iv) Be based on State assessments that—

(A) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;

(B) Have been in use by the State for more than one year; and

(C) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

(v) Track student progress through the State data system;

(vi) Include, as separate factors in determining whether schools are making AYP for a particular year—

(A) The rate of student participation in assessments under § 200.2; and

(B) Other academic indicators as described in § 200.19; and

(vii) Describe how the State's annual growth targets fit into the State's accountability system in a manner that ensures that the system is coherent and that incorporating student academic growth into the State's definition of AYP does not dilute accountability.

(3) A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under the process established by the Secretary under section 1111(e)(2) of the Act.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi); 7861)

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#### § 200.21 Adequate yearly progress of a State.

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the ESEA, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—